U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18019230

Date: SEP. 21, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an applied mechanics engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center initially denied the petition and subsequently affirmed his decision on motion, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria for this classification, of which he must meet at least three. We dismissed the Petitioner's appeal of the Director's decision, as well as the Petitioner's subsequent motion to reopen and motion to reconsider. The matter is again before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Here, the subject of the prior decision was our dismissal of the Petitioner's combined motion to reopen and reconsider. As such, the issue before us is whether the Petitioner has submitted new facts to warrant reopening or established that our decision to dismiss the previous combined motion was based on an incorrect application of law or USCIS policy.

A. Procedural History

The Petitioner initially claimed that he meets five of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material in major trade publications or other major media;
- (iv), Participation as a judge of the work of others in his field;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

In denying the petition, the Director concluded that the Petitioner only satisfied two of the claimed criteria; specifically, the criteria related to judging the work of others and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). On appeal, we determined that the Petitioner met the authorship of scholarly articles criterion, but we withdrew the Director's determination that the Petitioner satisfied the judging criterion after concluding that there was insufficient evidence of his participation in peer review activities. We also determined that the Petitioner had not satisfied the criteria relating to memberships

and published materials. We reserved and did not discuss the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), noting that the Petitioner would not satisfy the initial evidence requirements even if he established that this criterion had been met.[1]

On motion, the Petitioner addressed the criteria relating to judging the work of others and original contributions. Specifically, he asserted that we overlooked certain evidence that was previously submitted and stated that he was submitting new evidence establishing that he meets the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). He also requested that we review all evidence related to the original contributions criterion that we previously reserved, including new evidence submitted on motion.

We concluded that the new evidence submitted in support of the motion to reopen established that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), and we withdrew our appellate determination with regard to that criterion. However, we determined that the Petitioner's evidence on motion did not satisfy the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). We dismissed the motion to reopen and motion to reconsider, determining that the Petitioner had not established that he met a third criterion and thus had not met the initial evidence requirements for this classification, nor had he demonstrated that our prior decision was based on an incorrect application of law or USCIS policy.

B. Motion to Reopen

A motion to reopen is based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2).

The Petitioner asserts that he has made original contributions of major significance based on his doctoral dissertation at University of [redacted] in which he studied [redacted] in [redacted] due to [redacted] interactions, and based on his work as a senior applied mechanics engineer with [redacted], where he worked on the development and commercialization of [redacted] supports and restraints for [redacted] applications in the energy industry.

In dismissing the prior motion, we acknowledged the Petitioner's submission of letters from colleagues and other scientists and experts regarding his original contributions in his field.[2] While the letters summarized the Petitioner's research achievements and broadly discussed the potential impact of his mechanical engineering research in the [redacted] and [redacted] industries, we determined that they did not establish that his original contributions were already recognized as majorly significant within these fields.

We also noted that the inclusion of the Petitioner's published work in conferences and journals reflected the originality of that work, but determined that such publications and presentations alone did not establish that his research has been regarded as an original contribution of major significance in his field. Specifically, with regard to search results from *Google Scholar* indicating that one of his papers had been cited by others a total of seven times, we noted that he did not provide any comparative data suggesting that this level of attention from other researchers reflects widespread commentary

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

[2] Although we discussed a sampling of letters in our prior decision, we reviewed and considered each one.

about his work that is commensurate with a remarkable influence or impact on that field. Regarding numerous letters of recommendation submitted by the Petitioner, we determined that while the letters recognized the originality, importance, and/or prospective benefit of the Petitioner's graduate research and professional contributions at [redacted] they did not contain detailed information showing the unusual influence or high impact the Petitioner's contributions have already had in the engineering field or in the [redacted] and [redacted] industries.

In support of the current motion, the Petitioner submits evidence previously submitted, as well as an additional letter of support from [redacted] Production Development Advisor at [redacted] an additional letter of support from [redacted] and new material relating to companies and practices in the [redacted] industry intended to establish his eligibility for the requested classification.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[3] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

On motion, the Petitioner states that he "still maintains that he has made original contributions of major significance to the field," and asserts that his innovative research and application of the engineering computation tool - the [redacted] - has been widely implemented throughout the field." He argues that his application of [redacted] combined with the fact that his research papers have been cited over 70 times, establishes the widespread recognition and application of his research in the field. The Petitioner also asserts for the first time that the evidence submitted is also sufficient to establish that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner begins by asking us to "revisit" previously submitted documentation, including evidence of his publications and citation history and letters from various individuals discussing his research and accomplishments. The Petitioner resubmits copies of several of these documents for our reference, and again asserts why he believes such documentation is sufficient to establish that he meets the original contributions criterion. The Petitioner further acknowledges that he understands that "the above already exists in the record," and indicates that he is resubmitting such documentation "for convenience and clarity."

As stated previously, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board's definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14.* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." While the Petitioner's assertions regarding his publication history and the opinion letters is noted, the Petitioner nevertheless offers previously submitted documentation for our review on motion. As this evidence does not qualify as "new" and we already evaluated it in earlier proceedings, we will not further consider it in this proceeding.

The Petitioner offers two new letters in support of his motion, and asserts that these letters "offer additional analysis of his contributions and the expanding ramifications for companies who benefit from [redacted]'s [redacted]." A letter from [redacted][4] the Petitioner's colleague at [redacted], again explains that the company is a world leader in [redacted] used in [redacted] and [redacted] power production, as well as [redacted] and [redacted] facilities. The letter also repeats previous statements regarding the Petitioner's role in the development of [redacted], and how he was a leading influencer in moving the manufacturing of these [redacted] from a sister facility in China to [redacted]'s U.S. operations. In addition, [redacted] again credits the Petitioner's involvement in developing automation tools to expedite the creation of the [redacted]

This letter largely mirrors the previously submitted letter submitted in support of the first motion. However, the new letter states that the Petitioner's accomplishments at [redacted] were the result of his implication of the [redacted] which had not previously been used at [redacted] prior to his arrival. [redacted] also claims that the Petitioner's role in developing [redacted]'s allowed [redacted] to provide cutting-edge and reliable [redacted] products to clients in the critical [redacted] sector, such as [redacted] and [redacted]

[redacted]'s letter provides support for his conclusion that the Petitioner was a valuable asset to [redacted] and a highly skilled engineer, but he does not explain how his role in the development of [redacted] constitutes an original contribution of major significance. [redacted] praises the Petitioner's use of [redacted] in the development process, and the manner in which it simplified the development process to an extent. However, he does not sufficiently explain how the use of [redacted] in developing [redacted] which he indicates must be designed in accordance with industry codes and regulations, constitutes an original contribution of major significance. Moreover, [redacted] does not explain to what extent the Petitioner's role in the transfer of [redacted]'s [redacted] manufacturing from China to the United States amounts to an original contribution of major significance in the field.

The petitioner also submits a new letter from [redacted] a former project engineer for one of [redacted]'s customers.[5] [redacted] again describes the Petitioner's research in this area, and again refers to his use of [redacted] analysis to verify [redacted] design for his former employer. He also discusses the Petitioner's research in the field and again refers to the Petitioner's paper titled [redacted]" noting that "it was not a surprise for me to learn that he

[4] This is the third letter the Petitioner submitted from [redacted]

[5] The record contains a previous letter from the [redacted] which was submitted in support of the Petition.

was publishing and presenting his "*ASME*" paper at ASME's [redacted] in 2015.[6] Finally, while [redacted] credits the Petitioner with contributing to the improvement of safety in [redacted] systems and making "critical recommendations in order to upgrade and enhance the [redacted]" he does not provide further explanation or examples of how the Petitioner's work or the study noted above achieved these claimed safety improvements or how the study had been implemented in the industry.

Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value. On the other hand, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[7] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Although the Petitioner submits additional letters on motion, they do not offer further insight into how his original research has already influenced or impacted the field. While the letters again establish that the Petitioner's original work has added value to the pool of knowledge in his field and opened avenues for further research, they are insufficient to confirm that the level of attention his work has received in this area reflects widespread commentary and acceptance of his work, or that the mechanical engineering field regards his work as authoritative. Similarly, while we again acknowledge that the Petitioner published the above-referenced study and introduced efficiencies into [redacted]'s [redacted] design process, the submitted letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had in the wider field or that any research that contributes to incremental advancements in an important industry is an original contribution of major significance within the meaning of 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner also refers to previously submitted search results from *Google Scholar*, claiming that since his research has been cited 70 times, this demonstrates that "his research has been used and validated by other experts in the field." On motion, the Petitioner also provides several Internet excerpts and articles generally discussing citation statistics to support this assertion, noting that the number of times a paper or article is cited is incongruent to its significance and impact on a given field.

Generally, citations to a given article can serve as an indication that the field has taken interest in a petitioner's work; however, the fact that a petitioner has published articles that other researchers have referenced, is not, by itself, sufficient to establish that he meets this criterion. Here, the Petitioner has not presented sufficient evidence establishing that the citation numbers recorded in *Google Scholar* confirm that one or more of his publications has provoked widespread commentary or received notice from others working in the field at a level consistent with "contributions of major significance in the field." Although he has submitted evidence that his work has been cited by other researchers, he has not sufficiently shown that his work has been cited as authoritative in the field or has otherwise

[6] In our prior decision, we noted that the referenced paper was accepted for the 2015 ASME [redacted]; however, we determined that the record did not demonstrate that the Petitioner's work had been cited by other researchers or otherwise established that the study had attracted widespread commentary or been implemented by others in the industry.

[7] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

influenced the field in a significant way.[8] Further, while the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Petitioner's research findings have remarkably impacted or influenced his field. Although the Petitioner's citations indicate that others in the field have referenced his work, he did not establish that the submitted citation statistics alone reach the threshold of "major significance" as required by the regulation at 8 C.F.R. § 204.5(h)(3)(v).[9]

Finally, the Petitioner asserts that the evidence submitted on motion also demonstrates that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii).

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[10] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[11]

On motion, the Petitioner relies on the newly submitted letters from [redacted] and [redacted] noting that the letters establish that he "was the lead engineer for one of the most reputable [redacted] specialists for their most advance engineering group." Specifically, the Petitioner asks us to consider [redacted]'s statement where he indicates that the Petitioner's "work was critical to our ability to provide cutting-edge and reliable [redacted] which ensures the security and reliability of our product to companies (and their customers) throughout the United States and the world." The Petitioner further relies on [redacted]'s letter, which noted that the Petitioner occupied a critical role "as a conference presenter, publisher, and/or employee of other distinguished companies."

The record shows that the Petitioner played a significant role in the Applied Mechanics Unit for [redacted] and applied his innovative research to industrial [redacted] and the development of [redacted] The record, however, does not provide the sense of scale necessary to show that the Petitioner's role was leading or critical for [redacted] as an organization, and not just for the individual projects performed within the Applied Mechanics Unit.

A given unit or project is not, itself, an organization or establishment, and the record does not show that the Petitioner was sufficiently high in [redacted]'s organizational hierarchy to have a significant

[8] For example, the Petitioner resubmits a copy of his paper titled [redacted] and relies on citations to the paper in support of his assertion. Previously submitted search results from *Google Scholar*, however, indicate that this paper had been cited by others a total of seven times since its publication in 2012. The Petitioner did not provide any comparative data suggesting that this level of attention from other researchers reflects widespread commentary about his work that is commensurate with a remarkable influence or impact on that field.

[9] While we acknowledge the submitted Internet articles and excerpts regarding the value of citations, we find them unpersuasive. For instance, one submission is an opinion piece from www.lucbeaulieu.com, which appears to question the value of a number when reviewing citations of a given piece of work. We do not find such evidence probative here, as the issue before us is not the number of citations the Petitioner's publications have garnered, but whether his work has already been widely implemented or significantly impacted the field.

[10] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

[11] *Id.*

effect on the company as a whole, rather than the subdivision that works with applied mechanics. While the letter from [redacted] indicates that the Petitioner was placed in a "lead position" or a "lead role" and oversaw a team of engineers in the Applied Mechanics Unit, this team is not, by itself, an organization or establishment with a distinguished reputation. Moreover, the exact position held by the Petitioner during his tenure with [redacted] has not been sufficiently defined.

Again, while [redacted]'s letter attests to the importance of the Petitioner's role within the Applied Mechanics Unit of [redacted], it does so in the context of specific projects within a specific subdivision of the company. While the letter indicates that the Petitioner's work was profitable for the company, in terms of both revenue and innovation, it does not indicate the significance of the Petitioner's financial impact relative to the entire organization. The submitted information shows that the Petitioner has led a unit of engineers on several projects, but that unit is not an organization or establishment with a distinguished reputation.

Nor are we persuaded by the Petitioner's claim that his role as a conference presenter, publisher, and various undefined roles within other organizations, as stated in [redacted]'s letter, demonstrates that he performed in a leading or critical role for companies or establishments with distinguished reputation. Generally reciting all positions the Petitioner has occupied during his career, while notable, does not satisfy the requirements of this criterion. Moreover, this general claim, absent information identifying the organizations or establishments for which he claims to have performed a leading or critical role, precludes us from determining whether such entities had a distinguished reputation such that we could further evaluate the nature of his role within each such organization or establishment.

The Petitioner has not established that the Beneficiary performed in a leading or critical role for organizations or establishments with a distinguished reputation.

Considered together, the reference letters from his colleagues and other experts, the evidence consisting of the citations to the Petitioner's published findings, and the citation statistics establish that the Petitioner has been productive, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made an original contribution of major significance in his field, or that he performed in a leading or critical role for organizations or establishments with a distinguished reputation. For these reasons, the new evidence submitted on motion does not establish that the Petitioner meets this criterion, nor has he shown that our previous decision was based upon an incorrect application of law or policy.

C. Motion to Reconsider

A motion to reconsider must specify the factual and legal issues that were decided in error or overlooked in our prior decision. Although the Petitioner indicates that he is concurrently filing a motion to reconsider, the Petitioner's general request that we reconsider our prior decision does not specifically address our reasons for dismissal, nor does he attempt to identify or rebut any specific errors in that decision.

Here, the Petitioner relies on the new evidence he submits on motion, particularly the new letters submitted to demonstrate that he meets the evidentiary criteria relating to original contributions, as a basis for reconsideration of our decision. While the Petitioner states that he respectfully disagrees

with our prior determination that the previously submitted letters were insufficient to demonstrate that this criterion had been met, he does not argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Furthermore, our decision thoroughly analyzed and explained why every piece of evidence and argument addressed in the motion did not meet the regulatory requirements. Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence.

In sum, although the Petitioner has submitted a brief and additional evidence in support of the current motion, he does not contend that we misapplied the law or USCIS policy in dismissing the previous motion to reconsider. The Petitioner's conclusory statements that he satisfies the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) and is otherwise qualified for the requested classification, and his repetition of arguments he previously made in support of his appeal and prior motion, do not meet the requirements of a motion to reconsider.

The Petitioner's statement in support of the current motion does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. As such, the motion does not meet all the requirements of a motion to reconsider, and must therefore be dismissed.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

IV. CONCLUSION

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision, nor does the new evidence submitted on motion establish that he meets at least three of the ten evidentiary criteria for this classification. Accordingly, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.